

No. 15934 ✓

---

---

United States  
Court of Appeals  
for the Ninth Circuit

---

EDWARD DUNBAR O'BRIEN, Appellant,

vs.

FRANK SINATRA, et al., Appellees.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

MAY 14 1958

PAUL P. O'BRIEN; CLE



No. 15934

---

---

United States  
Court of Appeals  
for the Ninth Circuit

---

EDWARD DUNBAR O'BRIEN, Appellant,

vs.

FRANK SINATRA, et al., Appellees.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division

---

---



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk to Transcript of Record on .....	30
Notice of .....	29
Certificate of Clerk to Transcript of Record...	30
Complaint .....	3
Minutes of Nov. 12, 1957—Hearing on Motion to Dismiss—Granted .....	12
Names and Addresses of Attorneys.....	1
Notice of Action.....	29
Notice of Appeal.....	29
Notice of and Motion to Vacate Order of Nov. 12, 1957, etc.....	16
Notice of Entry of Judgment.....	16
Notice of Hearing on Motions to Vacate Order of Nov. 12, 1957, etc.....	22
Notice of Motion That Suit Be Abated, etc.....	24
Notice of Motion to Dismiss or for More Definite Statement .....	11

Notice of Ruling.....	27
Order Granting Motion to Dismiss and Judgment of Dismissal.....	13
Order Refusing Filing of Motion for Reconsideration of Orders Heretofore Filed.....	28
Telegram of Nov. 27, 1957, Edward D. O'Brien to Hon. Peirson M. Hall, Judge.....	22

## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

EDWARD DUNBAR O'BRIEN,  
7020 Jeffery Boulevard,  
Chicago 49, Illinois.

For Appellees:

PAYSON WOLFF,  
6400 Sunset Boulevard,  
Los Angeles 28, California.





In the District Court of the United States, Southern District of California, Central Division

No. 1161-57 PH

EDWARD DUNBAR O'BRIEN,

Plaintiff,

vs.

FRANK SINATRA, H. SANICOLA, GEORGE WOOD, IRVING LAZAR, MOE ATTENBERG—WILLIAM MORRIS AGENCY, 151 El Camino Drive, Beverly Hills, Calif.

SAMUEL GOLDWYN, R. MONTA, LOUIS B. MAYER, DORE SCHARY, GEORGE MURPHY, SOL SIEGEL, SAMMY KAHN, NICHOLAS BRODZSKY, BING CROSBY, CELESTE HOLM, SIDNEY BLACKMER, MARGALO GILMORE, JUNE ALLISON, ANN SHERIDAN, ANN MILLER, CHARLOTTE GREENWOOD, JEFF RICHARDS, FRED ASTAIRE, JANE POWELL, HELEN ROSE, GEORGE WELLES, GREGORY PECK, LAUREN BACALL, DOLORES GRAY—METRO-GOLDWYN-MAYER STUDIOS, 10202 Washington Boulevard, Culver City, California.

JACK WEBB, REGINALD ROSE—WARNER BROTHERS STUDIOS, 400 West Olive, Brb., Los Angeles, California.

MILTON H. RUDIN, 6400 Sunset Boulevard, Hollywood, California. CAPITOL RECORDS, 1750 North Vine Street, Hollywood, California. GORDON JENKINS, NBC-TV, Sunset & Vine, Hollywood, California. BRODERICK CRAWFORD, 183 Tigertail Road, Los Angeles 49, California. GEORGE SEATON, 5451 Marathon, Hollywood 38, California. LOUELLA PARSONS, International News Service, Hollywood, California. HEDDA HOPPER, Chicago Tribune Press Service, Hollywood, California, Defendants.

## COMPLAINT

I. The Court has original jurisdiction, Section 1338 (a) 28, Judicial Code.

II. Prior to February 12, 1955, plaintiff, then and ever since a citizen of the United States, created and wrote original books and music containing large amounts of material wholly original with plaintiff, copyrightable subject matter under the laws of the United States/Universal Copyright Convention; between February 14, 1922 and the present plaintiff complied in all respects with the Act of March 4, 1909, and all other laws governing copyright, securing the exclusive rights and privileges in/to copyright in said books/music and received from the Register of Copyrights certificates of registration dated and identified as follows:

“The Library of a Lifetime” of Edward Dunbar O’Brien, A283713, 12/31/56; “The Gettysburg Hymn” Eu373849, 5/1/44; 1st Edition, 2nd, E96858, 1/12/55; 3rd Edition, E104688 8/18/56; 4th Edition, A-283713, 12/31/56; “Concerto of Two Hearts” Eu51047, 8/25/46; “Lover’s Hour” E98320 4/2/56; “45th,—From Broadway to 8th Avenue,” Catalogue, E96858, Eu403496, 7/12/55; catalogue E104688; “Miss Beautiful, Please Will You Be Mrs. Me?” E98691, 4/25/56, Etc.

III. After March 4, 1946, defendants infringed said copyrights by marketing: motion pictures, “High Society”; “The Opposite Sex”; “Designing Woman”; “Wings of Victory”; “Royal Wedding”; “Gigi”; “The Joker Is Wild” or “The Joker”; musicals, “Manhattan Tower”; songs, “I Want You To Want Me,” which were copied largely from

plaintiff's copyrighted books/music by and in the following manner and means:

1. Plaintiff sent to Broderick Crawford Vols. I, II of "45th,—From Broadway to 8th Avenue," discussing with defendant to become manager for plaintiff and properties asking Broderick Crawford "show it to Frank Sinatra, see what he thinks," and charges permitting plagiarism, participating therein, willful infringement for profit, Adverse Possession held contrary to order of owner to return, and adherence to felonious conspiracy to damage and deprive the plaintiff against Broderick Crawford.

2. Plaintiff submitted "The Gettysburg Hymn" to the Republican National Committee for performance at the Republican National Convention, 1956, therewith submitting program propounded in private letters,—copyright—requesting that the artists of the United States for the first time in history,—original and unusual,—copyright—now be invited before the conventions to sing "The Gettysburg Hymn" in [3] various voices at various sessions thereof. Plaintiff submitted the same program to the Democratic National Committee. The Republican National Committee acknowledged, plaintiff communicated his whole plans, furnished and fashioned in format,—copyright,—by Act, 1952. The plaintiff requested Frank Sinatra first, this artist to have the highest honor of any artist in all history, the first appearance before the largest audience ever assembled, first full Television broadcast-

ing of the National Conventions of the United States, 1956. Plaintiff further fully informed singers personally of program historically originating hereupon, Frank Sinatra informed through the William Morris Agency (below).

3. Warned of infamous infringement and the peril to properties of the plaintiff, George Murphy, Chairman, Entertainment Committee, Republican National Convention, 1956, proceeded with plagiarism, willful infringement of copyright, felonious conspiracy to damage and deprive charged against George Murphy therefor.

4. Dore Schary, Frank Sinatra, the former Chairman, Entertainment Committee, the Democratic National Convention, 1956, the latter singer, proceeded with plagiarism, and in concert with William Morris Agency, Moe Attenberg, Irving Lazar, George Wood, and H. Sanicola are charged with plagiarism, willful infringement, concretion of felonious conspiracy to damage, deprive, and are charged with an act of malice,—the evil intent to injure,—for: General and flagrant, felonious and compound conspiracy against person and properties of plaintiff emerges: Within 10 days of the above acts it was exposed that every known work available to, discoverable by the defendants was plagiarized and infringed, counterfeited and copied by Loew's, Inc., owners of Metro-Goldwyn-Mayer Studios and others employing Dore Schary, "Production Chief," and Frank Sinatra employed thereby as:

5. William Morris Agency et al., by fraud, operation of confidence game, counterfeited and copied, superarrogated works of plaintiff, sold, simulated, suggested, submitted, templated and transferred, educating, encouraging and effecting motion picturizations of plaintiff's properties, profiting from contexts and clients, instrumenting, insinuating and installing clients appearing thereby in properties communicated in criminal misappropriation for their commercial advantage of belongings, benefits and properties of plaintiff, prejudging sale, prebending profits and superseding the objects of the original works by plagiarism, the criminal offense of [4] willful infringement for profit 55 counts (or, works of Edward Dunbar O'Brien in various versions, 141 counts) the whole acts flagrant and felonious conspiracy and compound conspiracy to injure and impair, damage and deprive, defendant Dore Schary 35 counts (or 91) herein, Frank Sinatra 33 counts (71) Sammy Kahn, Nicholas Brodzky in this jurisdiction 33 counts respectively, and charges the same and violation of the Competition Acts, trust laws, being combined with others to close commerce and lawful livelihood to another warranting Federal Probation for continuation in business or dissolution as a business made against Capitol Records, Incorporated, recorders of music in the motion pictures at issue and element in combination in restraint of trade,—the obstruction of the originals to the purpose of plagiarism thereof.

6. Charges the same, plagiarism, willful infringement for profit, flagrant and felonious con-

spiracy and compound conspiracy, Federal Probation proscriptive of putative policies warranted, are laid against Samuel Goldwyn, Louis B. Mayer, Sol Siegel, practitioners of the policies and the same against R. Monta, officer of Loew's, Inc., and additional charges,—with willful and malicious intent to injure, fraud, intimidation and conspiracy to commit criminal libel against the plaintiff.

7. Charges the same against Milton H. Rudin, defendant-representative of Frank Sinatra — conspiracy to commit criminal libel against plaintiff,—threatening, attempted intimidation, grossly distorting and maliciously misrepresenting public statements of plaintiff.

8. Gordon Jenkins pirated, plagiarized, plundered the whole work "Heartstrings, — Music On The Heartstrings" of plaintiff in story and songs 6 scenes, 31 counts (124) of plagiarism, the criminal offense of willful infringement for profit, in adherence to felonious conspiracy and compound conspiracy to damage and deprive the plaintiff.

9. The Academy of Motion Picture Arts and Science (1957) exploited by multiple combination of defendant concerting to commit felonious conspiracy to humiliate and harm, damage and deprive the plaintiff and defraud the general public (plaintiff is merely pleading before Courts of several jurisdictions for relief, plagiarism is prizewinning) therefore plagiarism, fraud, the criminal offense of willful infringement for profit and felonious conspiracy and compound conspiracy to injure and

impair, damage and deprive the plaintiff charged against George Seaton, president [5] thereof, Bing Crosby also charged therewith therefor.

10. Celeste Holm, Sidney Blackmer, Margalo Gilmore, June Allison, Ann Sheridan, Charlotte Greenwood, Ann Miller, Jeff Richards, Fred Astaire, Jane Powell, Helen Rose, George Welles, Gregory Peck, Lauren Bacall, Dolores Gray, Jack Webb, Reginald Rose, demonstrating adherence thereto are charged with adherence to plagiarism, willful infringement for profit, felonious conspiracy and compound conspiracy to damage and deprive the plaintiff, all being jointly and severally liable at infringement.

11. Louella Parsons, Hedda Hopper, at conscious writing and publication of fraud to damage and deprive the plaintiff, deceive the general public, are charged with adherence to plagiarism, willful infringement for profit and felonious conspiracy and compound conspiracy to damage and deprive, injure and impair the plaintiff.

12. Copies of plaintiff's books/music and defendants' infringements are before the instant Court of jurisdiction (elements in the Cause to trial October 14, 1957, Chicago, Illinois, United States District Court, Northern District of Illinois).

IV. Wherefore Plaintiff Demands: (1) That defendants, agents and servants be enjoined during pendency of this action and permanently from infringing said copyrights in any manner. (2) Defendants be required to pay to plaintiff damages in

consequence of defendants infringements and increase of damages hereupon declared for necessities of the present Complaint and actions associated therewith and to account and pay over all gains, profits and advantages derived by defendants from their infringements of plaintiff's copyrights are such damages as to the Court shall appear proper within the provisions of the copyright statutes. (3) Defendants be required to deliver up to be impounded during pendency of this action all copies in their possession or under their control infringing said copyrights and to deliver up for destruction all infringing copies, plates, molds, and other matter for making such infringing copies. (4) Defendants pay to the plaintiff costs of this action and reasonable attorneys fees to be all wed to the plaintiff by this Court. (5) That plaintiff have such other and further relief,—penal provisions,—as is just in accord with the charges.

/s/ EDWARD DUNBAR O'BRIEN. [6]

Trial By Jury Is Demanded in the enclosed Cause, Edward Dunbar O'Brien v. Frank Sinatra, et al.

/s/ EDWARD DUNBAR O'BRIEN. [7]

Duly Verified. [8]

[Endorsed]: Filed October 8, 1957.



[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS OR FOR  
MORE DEFINITE STATEMENT, OF DE-  
FENDANTS FRANK SINATRA, H. SANI-  
COLA, WILLIAM MORRIS AGENCY, INC.,  
AND MILTON A. RUDIN, INCORRECTLY  
SUED HEREIN AS MILTON H. RUDIN

To Plaintiff, Edward Dunbar O'Brien, Appearing  
in Propria Persona:

Please Take Notice that on November 12, 1957, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, before the Honorable Peirson M. Hall, United States District Judge, in Courtroom No. 1, United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc. and Milton A. Rudin will move to dismiss the within action as to themselves and themselves only, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on the grounds that the Court has no jurisdiction over the subject matter of the action, and on the further grounds that plaintiff's Complaint on file herein fails to state a claim [9] against said defendants, or any of them, upon which relief can be granted.

Please Take Further Notice that said defendants will further move said Court to require plaintiff to provide a more definite statement of the nature of the claims asserted by plaintiff in said action, and that said claims be separately stated.

Said motions will be based upon the plaintiff's Complaint, this Notice, and the Memorandum of Points and Authorities filed concurrently herewith, and all of the records, pleadings and documents on file in the within action.

Dated: October 31, 1957.

GANG, TYRE, RUDIN & BROWN,  
 MARTIN GANG,  
 PAYSON WOLFF,  
 /s/ By PAYSON WOLFF,  
 Attorneys for Moving Defendants. [10]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed November 1, 1957.

---

United States District Court, Southern District  
 of California, Central Division

No. 1161-57-PH Civil

[Title of Cause.]

#### MINUTES OF THE COURT

Date: Nov. 12, 1957, at Los Angeles, Calif.

Present: Hon. Peirson M. Hall, District Judge;  
 Deputy Clerk: S. W. Stacey; Reporter: Agnar  
 Wahlberg; Counsel for Plaintiff: No appearance;  
 Counsel for Defendants Frank Sinatra, et al.: Pay-  
 son Wolff.

Proceedings: For hearing on motion of Frank  
 Sinatra, Henry Sanicola, William Morris Agency,  
 Inc., and Milton A. Rudin to dismiss.

Court hears statement of counsel for defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin on motion to dismiss. Court Orders said motion to dismiss granted.

And, on the Court's own motion, It Is Ordered that the case is dismissed as to all other defendants on the ground that it fails to state a claim for lack of jurisdiction, and for want of prosecution, without leave to amend.

Counsel for defendants Frank Sinatra, et al., will prepare and present formal order.

JOHN A. CHILDRESS,

Clerk,

/s/ By S. W. STACEY,

Deputy Clerk. [23]

---

In the United States District Court, Southern  
District of California, Central Division

Civil No. 1161-57 PH

EDWARD DUNBAR O'BRIEN,            Plaintiff,

vs.

FRANK SINATRA, H. SANICOLA, et al.,  
Defendants.

ORDER GRANTING MOTION TO DISMISS  
AND JUDGMENT OF DISMISSAL

This cause came on to be heard before the above-

entitled Court, the Honorable Peirson M. Hall, United States District Judge presiding, on the motion of defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin to dismiss the within action as to said defendants on the grounds that the Court has no jurisdiction over the subject matter of the action, and on the further grounds that plaintiff's complaint on file herein fails to state a claim upon which relief can be granted. Said motion was heard on November 12, 1957, the plaintiff failing to appear, and Gang, Tyre, Rudin & Brown, Martin Gang and Payson Wolff, by Payson Wolff, appearing for moving defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin; the Court being fully advised finds that the Court has no jurisdiction [24] over the subject matter of the action; that plaintiff's complaint fails to state a claim against said moving defendants upon which relief can be granted; and that plaintiff has failed to prosecute the within action by his failure to appear and defend against the aforesaid motion. The Court further, of its own motion finds that the claims as alleged against the moving defendants cannot be separated from those against the other named defendants herein; that the Court has no jurisdiction over the subject matter of the action as against all named defendants herein; that plaintiff's complaint fails to state a claim against any of the named defendants herein upon which relief can be granted. Now Therefore:

**It Is Hereby Ordered, Adjudged and Decreed**

that the motion of defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin to dismiss plaintiff's complaint upon the grounds above stated be and it is hereby granted, and said motion is granted upon the further ground of plaintiff's failure to prosecute the within action.

It Is Hereby Further Ordered, Adjudged and Decreed that the above-entitled action be dismissed against defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin, without leave to amend.

It Is Hereby Further Ordered, Adjudged and Decreed that, upon the Court's own motion and upon the grounds above stated, plaintiff's complaint be and the same is hereby dismissed as against all defendants, without leave to amend.

It Is Hereby Further Ordered, Adjudged and Decreed that the defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., and Milton A. Rudin have judgment against plaintiff Edward Dunbar O'Brien for costs and disbursements [25] in this action, to be hereinafter taxed, on notice, and hereinafter inserted by the Clerk of this Court in the sum of \$. . . . .

Dated: November 21st, 1957.

/s/ PEIRSON M. HALL,

United States District Judge. [26]

Affidavit of Service by Mail Attached. [27]

[Endorsed]: Filed November 21, 1957. Entered November 22, 1957.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To Edward Dunbar O'Brien, plaintiff:

Please Take Notice that on November 22, 1957, the Order Granting Motion For and Judgment of Dismissal, against plaintiff and in favor of defendants was entered in the above-entitled action.

Dated: November 25, 1957.

GANG, TYRE, RUDIN & BROWN,  
MARTIN GANG,  
PAYSON WOLFF,  
/s/ By PAYSON WOLFF,  
Attorneys for Moving Defendants. [28]

Affidavit of Service by Mail Attached. [29]

[Entered]: Filed November 26, 1957.

[Title of District Court and Cause.]

NOTICE OF AND MOTION TO VACATE  
ORDER OF NOVEMBER 12, 1957, HOLD  
MOVING DEFENDANTS AND THEIR  
ATTORNEYS IN CONTEMPT OF COURT  
THEREFOR AND GRANT LEAVE TO  
PLAINTIFF TO AMEND COMPLAINT

Notice

Please Take Notice that I file with the Clerk of the United States District Court for the Southern District of California, Central Division, in the

United States Postoffice and Court House Building,  
312 North Spring Street, Los Angeles, California,  
this day the enclosed and thereby move the Court:

1. To vacate the order of November 12, 1957,  
Granting Motion to Dismiss and Judgment of Dis-  
missal;

2. Hold moving defendants and their attorneys  
in Contempt of Court therefor;

3. Grant leave to plaintiff to amend the Com-  
plaint;

and that I further file: Plaintiff's Memorandum in  
Answer to Memorandum in Support of Alternative  
Motions to Dismiss or For More Definite Statement  
of Moving Defendants Frank Sinatra, H. Sanicola,  
Milton A. Rudin, and Moe Attenberg, Irving Lazar,  
George Wood, incorrectly represented therein as  
"William Morris Agency, Inc."

Dated: November 19, 1957.

/s/ EDWARD DUNBAR O'BRIEN.

To: Gang, Tyre, Rudin & Brown, 6400 Sunset Bou-  
levard, Los Angeles 28, California, attorney for  
Frank Sinatra, H. Sanicola, Milton A. Rudin  
and Moe Attenberg, Irving Lazar, George  
Wood or "William Morris Agency, Inc."

Samuel Goldwyn, R. Monta, Dore Schary, George  
Murphy, Sol Siegel, Sammy Kahn, Nicholas  
Brodszky, Bing Crosby, Celeste Holm, Sidney  
Blackmer, Margalo Gilmore, June Allison, Ann

Sheridan, Ann Miller, Charlotte Greenwood, Jeff Richards, Fred Astaire, Jane Powell, Helen Rose, George Welles, Gregory Peck, Lauren Bacall, Dolores Gray—Metro-Goldwyn-Mayer Studios, 10202 Washington Boulevard, Culver City, California.

Jack Webb, Reginald Rose, Warner Brothers Studios, 4000 West Olive, Brb., Los Angeles, California.

Capitol Records, 1750 North Vine Street, Hollywood, California. Gordon Jenkins, c/o NBC-TV, Sunset & Vine, Hollywood, California. Broderick Crawford, 183 Tigertail Road, Los Angeles 49, California. George Seaton, 5451 Maraton, Hollywood 38, California. Louella Parsons, International News Service, Hollywood, California. Hedda Hopper, Chicago Tribune Press Service, Hollywood, California. [31]

[Title of District Court and Cause.]

### MOTION

Plaintiff Edward Dunbar O'Brien moves the Court hereby:

1. To vacate the order of November 12, 1957, Granting Motion to Dismiss and Judgment of Dismissal;
2. Hold the moving defendants and their attorneys in Contempt of Court therefor;



3. Grant leave to plaintiff to amend the Complaint;

on the following grounds:

1. Plaintiff does indeed not fail to prosecute the within action, nor will he fail to prosecute or to appear upon any just and accessible Notice.

Plaintiff received the within Notice and Memorandum on November 12, 1957, in Chicago, Illinois, same day and date, so postmarked, and hours later than the moving attorneys appearance in Los Angeles, California, precluding any physical possibility of appearance in the above-entitled Court, the moving [32] defendants and their attorneys aware and informed of plaintiff's departure from Los Angeles, California, awaiting their answers to Complaint against them.

The moving defendants and their attorneys have accordingly attempted to secure rulings of the Court by stealth in the known absence of the plaintiff, known unavailability to communication, and by affording the Court selected "exhibits" (surreptitious inquiries) of no value and wholly negated by ten (10) months of subsequent rulings by the hearing Court in other (Illinois) action, all favorable to the plaintiff to the present and including refusal of the Court fully informed, to entertain any dismissal of any defendants even where jurisdiction is not acquired.

2. Plaintiff is ill (disabled), condition seriously aggravated by doings of these defendants and their

attorneys, doings forcing the plaintiff to bring this to the attention of the Court, the present doings being not the first time plaintiff has been confronted with the most callous advantage-taking of this condition (an element in the original actions, — the thought that plaintiff was disabled from protecting himself). In these circumstances and due to the defendants actions plaintiff's funds are extremely restricted, the plaintiff pleads hardship against the defendants in the present Court as in other (Illinois) action, nevertheless has effortfully traveled to seek relief in several Courts and will do so again at any accessible date directed by the present Court.

3. Plaintiff could ill-anticipate that moving defendants and attorneys, in possession of hundreds of papers giving definition to the cause against them—all of which will be introduced in evidence,—could appear to solicit the Court for more “definite statement.” Plaintiff does not suggest universal jurisdiction, but summons only those defendants herein in the jurisdiction of the present Court.

4. Plaintiff cites that the moving defendants and their attorneys have [33] falsified intelligence to the Court. They are in full possession of all documents in other (Illinois) action, which is in pre-trial conference in Chicago, Illinois, and requires the plaintiff's presence there.

5. The moving defendants and their attorneys, falsifying intelligence, have denied their full possession of information from the plaintiff, other defendants, and from the Court (Illinois), thus

have misinformed and mal-advised the present Court issuing the order of November 12, 1957, withholding fifteen (15) months of full information from the Court's appraisal and causing the Court to act upon improper, inaccurate, untruthful and inadequate intelligence, placing themselves not in possession of a viable order but in contempt of Court.

It is submitted that the Court cannot consider an order of dismissal where the previous (Illinois) Court, fully informed, and a Circuit Court of Appeals have resolved that the whole Cause go to trial.

Wherefore the plaintiff moves the Court to:

1. vacate the order of November 12, 1957 Granting Motion to Dismiss and Judgment of Dismissal;
2. find the moving defendants and their attorneys in Contempt of Court therefor;
3. and grant leave to plaintiff to amend the Complaint, the very force and attempted fright of the order submitted the Court to sign appealably impinges upon fundamental rights, denying all rights and remedies for relief, without hearing.

Dated: November 20, 1957.

/s/ EDWARD DUNBAR O'BRIEN. [34]

Duly Verified. [35]

Affidavit of Service by Mail Attached. [36]

[Endorsed]: Filed December 6, 1957.

[Western Union]

Telegram

LA108—L L LSM310

(L CA 441) RX PD AR—Chicago, Ill. 27 455PMC

Hon. Peirson M. Hall, Judge of the U. S. District Court, U. S. Court House, Losa (TB).

Reference O'Brien versus Sinatra Number 1161-57-PH. On Advice submit ex parte order entered and Plaintiff Motion to Vacate ten days refused not filed as not compliance with rules. We at loss so what rules. Respectfully request be informed motion be properly and promptly filed in full compliance therewith.

Edward Dunbar O'Brien,  
7020 Jeffery Blvd.,  
Chicago 49, Ill. [37]

---

[Title of District Court and Cause.]

NOTICE OF HEARING ON MOTIONS TO VACATE THE ORDER OF NOVEMBER 12, 1957, HOLD MOVING DEFENDANTS AND THEIR ATTORNEYS IN CONTEMPT OF COURT THEREFOR, AND ORDER DEFENDANTS TO ANSWER OR OTHERWISE PLEAD OR GRANT PLAINTIFF LEAVE TO AMEND THE COMPLAINT

Please Take Notice that I file this Notice of Hearing on January 6, 1958, at 10:00 o'clock A.M., with the Clerk of the United States District Court

for the Southern District of California this day for hearing before the Honorable Peirson M. Hall, Judge of the United States District Court, in Courtroom No. 1, United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, of plaintiff's motions to vacate the order of November 12, 1957, hold moving defendants and their attorneys in Contempt of Court therefor, and order defendants to answer or otherwise plead or grant leave to plaintiff to amend the Complaint (said motions and Memorandum in support thereof previously filed November 19, 1957).

Dated: December 20, 1957.

/s/ EDWARD DUNBAR O'BRIEN. [38]

To: Gang, Tyre, Rudin & Brown, 6400 Sunset Boulevard, Los Angeles 28, California, attorneys for Frank Sinatra, H. Sanicola, Milton A. Rudin, and Moe Attenberg, Irving Lazar, George Wood, or "William Morris Agency, Inc.," incorrectly represented herein.

Samuel Goldwyn, R. Monta, Dore Schary, George Murphy, Sol Siegel, Sammy Kahn, Nicholas Brodzky, Bing Crosby, Celeste Holm, Sidney Blackmer, Margalo Gilmore, June Allison, Ann Sheridan, Ann Miller, Charlotte Greenwood, Jeff Richards, Fred Astaire, Jane Powell, Helen Rose, George Welles, Gregory Peck, Lauren Bacall, Dolores Gray. Metro-Goldwyn-Mayer Studios, 10202 Washington Boulevard, Culver City, California.

Jack Webb, Warner Brothers Studios, 4000 W. Olive, Brb., Los Angeles, Calif. Capitol Records, 1750 North Vine Street, Hollywood, Calif. Gordon Jenkins, NBC-TV, Sunset & Vine, Hollywood, California. Bröderick Crawford, 183 Tigertail Road, Los Angeles 49, California. George Seaton, 5451 Marathon, Hollywood 38, California. Louella Parsons, International News Service, Hollywood, California, Hedda Hopper, Chicago Tribune Press Service, Hollywood, California. [39]

Affidavit of Service by Mail Attached. [40]

[Endorsed]: Filed December 23, 1957.

---

[Title of District Court and Cause.]

NOTICE OF MOTION THAT SUIT BE  
ABATED AS TO LOUIS B. MAYER, REGI-  
NALD ROSE, DEFENDANTS

Please Take Notice that I file with the Clerk of the United States District Court for the Southern District of California, Central Division, for hearing on January 6, 1958 at 10:00 o'clock A.M., before the Honorable Peirson M. Hall, Judge of the United States District Court in Court Room No. 1 in the United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, this day the within and thereby move the Court:

1. The death of Louis B. Mayer suggested of

record and suit be abated as to the said Louis B. Mayer.

2. At removal of residence of defendant Reginald Rose service of process is not had upon the said in the within (California) action. Service of process is had upon the said in other (New York) action and appearance entered therefor in accord with Notice of Pendency of Other Actions filed by plaintiff November 19, 1957. Therefore that suit be abated as to the said Reginald Rose in the within (California) action.

Dated: December 20, 1957.

/s/ EDWARD DUNBAR O'BRIEN. [41]

To: Gang, Tyre, Rudin & Brown, 6400 Sunset Boulevard, Los Angeles 28, California, attorneys for Frank Sinatra, H. Sanicola, Milton A. Rudin, and Moe Attenberg, Irving Lazar, George Wood, or "William Morris Agency, Inc.," incorrectly represented herein.

Samuel Goldwyn, R. Monta, Dore Schary, Sol Siegel, George Murphy, Sammy Kahn, Nicholas Brodsky, Bing Crosby, Celeste Holm, Sidney Blackmer, Margalo Gilmore, June Allison, Ann Sheridan, Ann Miller, Charlotte Greenwood, Jeff Richards, Fred Astaire, Jane Powell, Helen Rose, George Welles, Gregory Peck, Lauren Bacall, Dolores Gray,—Metro-Goldwyn-Mayer Studios, 10202 Washington Boulevard, Culver City, California.

Jack Webb, Warner Brothers Studios, 4000 W. Olive, Brb., Los Angeles, California. Capitol Records, 1750 North Vine Street, Hollywood, California. George Seaton, 5451 Marathon, Los Angeles 38, California. Gordon Jenkins, NBC-TV, Sunset & Vine Streets, Hollywood, California. Broderick Crawford, 183 Tigertail Road, Los Angeles 49, California. Louella Parsons, International News Service, Hollywood, California. Hedda Hopper, Chicago Tribune Press Service, Hollywood, California.

Affidavit of Service by Mail Attached. [42]

[Endorsed]: Filed December 23, 1957.



[Title of District Court and Cause.]

NOTICE OF RULING

To Edward Dunbar O'Brien, plaintiff:

Please Take Notice that on January 6, 1958, the above-entitled Court denied the plaintiff's Motions to Vacate the Order of November 12, 1957, Hold Moving Defendants and their Attorneys in Contempt of Court Therefor, and Order Defendants to Answer or Otherwise Plead or Grant Plaintiff Leave to Amend the Complaint.

Dated: January 7, 1958.

GANG, TYRE, RUDIN & BROWN,  
MARTIN GANG,  
PAYSON WOLFF,

/s/ By PAYSON WOLFF,

Attorneys for Defendants Frank Sinatra, Henry Sanicola, William Morris Agency, and Milton A. Rudin. [48]

Affidavit of Service by Mail Attached. [49]

[Endorsed]: Filed January 8, 1958.

[Title of District Court and Cause.]

ORDER REFUSING FILING OF MOTION FOR  
RECONSIDERATION OF ORDERS HERE-  
TOFORE ENTERED

It appearing to the court that on Nov. 21, 1957, an order Dismissing the case was entered; that thereafter and on Dec. 23, 1957, the plaintiff filed a motion to reconsider and vacate the order of Nov. 21, 1957 (Nov. 12, 1957); that said motion was set for hearing by the plaintiff on January 6, 1958; that on Jan. 6, 1958, after due consideration, the court denied said motion to reconsider and vacate; that on Jan. 20, 1958, the plaintiff presented for filing another motion to reconsider and vacate the order of Jan. 6, 1958, and of Nov. 21, 1957 (Nov. 12, 1957), and the court having considered the matter, and it appearing that a similar motion, to-wit, the motion of Dec. 23, 1957, has been denied, it is ordered that said motion and accompanying papers be not filed, but that they be returned to the plaintiff together with a copy of this order.

Dated January 20, 1958.

/s/ PEIRSON M. HALL,  
U. S. District Judge. [50]

[Endorsed]: Filed January 20, 1958.

[Title of District Court and Cause.]

NOTICE OF ACTION

Please Take Notice that I file with the Clerk of the United States District Court for the Southern District of California this day this information that at the ruling of the Honorable Peirson M. Hall, Judge of the United States District Court, January 27, 1958, in the within action and the circumstances therein, a new action will be filed as promptly as possible.

Dated: January 28, 1958.

/s/ EDWARD DUNBAR O'BRIEN. [54]

---

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Edward Dunbar O'Brien, petitioner above named, hereby appeals for hearing to review the order entered ex parte in this action by the United States District Court for the Southern District of California, Central Division, on 12 November, 1957, and re-hearing thereon denied 27 January, 1958.

Dated: February 3, 1958.

/s/ EDWARD DUNBAR O'BRIEN. [55]

Affidavit of Service Attached. [56]

[Endorsed]: Filed February 6, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 58, inclusive, containing the original:

Complaint.

Notice of Motion to Dismiss, etc.

Minute Order of Court—11/12/57.

Order Granting Motion to Dismiss and Judgment of Dismissal.

Notice of Entry of Judgment.

Notice of Motion to vacate order of Nov. 12, 1957, etc.

Telegram, of 11/27/57.

Notice of hearing on motions to vacate the order of Nov. 12, 1957, etc.

Notice of motion that suit be abated, etc.

Memorandum of Points and Authorities in opposition to motion to vacate order of Nov. 12, 1957, etc.

Notice of ruling.

Order refusing filing of motion for reconsideration of orders heretofore entered.

Memorandum of Points and Authorities in opposition to motion for re-hearing of the plaintiff's motions to vacate order of Nov. 27, 1957, etc.

Notice of Action.

Notice of Appeal.

Designation of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has not been paid by appellant.

Dated: March 14, 1958.

[Seal]                     JOHN A. CHILDRESS,  
                               Clerk,

/s/ By WM. A. WHITE,  
           Deputy Clerk.

---

[Endorsed]: No. 15934. United States Court of Appeals for the Ninth Circuit. Edward Dunbar O'Brien, Appellant, vs. Frank Sinatra, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: March 17, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

